

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MAY 09 2016

JULIA C. DUDLEY, CLERK
BY: *HMcOre*
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KENNETH VALENTINE AWE,
Plaintiff,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS,
Defendant.

Civil Action No. 7:16-cv-00202

MEMORANDUM OPINION

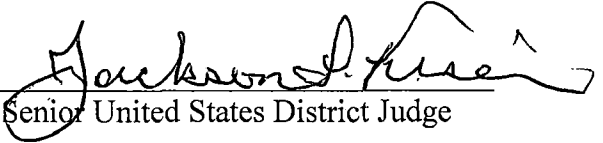
By: Hon. Jackson L. Kiser
Senior United States District Judge

Kenneth Valentine Awe, a Virginia inmate proceeding pro se, commenced this civil action pursuant to 42 U.S.C. § 1983. Upon a review of court records, it appears Plaintiff has had at least three non-habeas civil actions or appeals previously dismissed as frivolous, as malicious, or for failing to state a claim before filing this action. See Awe v. Mathena, No. 7:14-cv-241, slip op. at 2 (W.D. Va. July 3, 2014) (dismissed as frivolous); Awe v. Clarke, No. 7:14-cv-248, slip op. at 2 (W.D. Va. July 3, 2014)(dismissed as frivolous); Awe v. Clarke, No. 2:11-cv-537, slip op. at 3 (E.D. Va. April 6, 2012); see also Coleman v. Tollefson, 135 S. Ct. 1759, 1763 (2015) (holding a “strike” dismissal is counted regardless to the timing of a subsequent appeal); McLean v. United States, 566 F.3d 391, 399 (4th Cir. 2009) (dismissals without prejudice for frivolousness should not be exempted from 28 U.S.C. § 1915(g)).

After reviewing Plaintiff's submissions in this civil action, it is clear that Plaintiff does not allege any facts indicating that he is currently under any imminent threat of any serious physical injury within the meaning of 28 U.S.C. § 1915(g). Accordingly, I dismiss the action without prejudice for Plaintiff's failure to pay the filing fee at the time of filing the complaint. See, e.g., Dupree v. Palmer, 284 F.3d 1234, 1237 (11th Cir. 2002) (reasoning that the filing fee is due upon filing a civil action when in forma pauperis provisions do not apply to plaintiff and that the court

is not required to permit plaintiff an opportunity to pay the filing fee after recognizing plaintiff is ineligible to proceed in forma pauperis).

ENTER: This 9th day of May, 2016.


Senior United States District Judge